

FIRST AMENDMENT TO CONTRACT
A56-5-05-29

This is an amendment to the contract entered into by and between **The Office of the Attorney General** (hereinafter referred to as "State") and **Krieg DeVault LLP**, whose address is One Indiana Square, Suite 2800, Indianapolis, IN 46204 (hereinafter "Counsel")

As required by Paragraph 2 ("Consideration"), State and Counsel have agreed to amend the maximum amount payable under the contract.

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

A. Paragraph 2 ("Consideration") is hereby deleted in its entirety and replaced with the following:

2. Consideration. Counsel shall be paid at the rate of one hundred and ninety-five dollars (\$195.00) an hour. The maximum amount payable under this Agreement shall not exceed one hundred twenty-five thousand dollars (\$125,000.00) and Counsel shall not, and shall not be required to, provide further Legal Services once such maximum amount is reached unless the parties agree to amend such maximum amount payable. Counsel's invoices to the State shall be prepared on a monthly basis, or more frequently upon request of the State, and shall include fees incurred for Legal Services and expenses incurred by Counsel in the performance of Legal Services which will be paid by the State pursuant to Counsel's client expense policy. All payments shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures. In accordance with I.C. 4-13-2-20, the parties acknowledge that no retainer fee has been paid in connection with this Agreement.

B. The following paragraph is added to the contract:

Compliance with Telephone Solicitations Act. As required by IC 5-22-3-7:

- (1) the Contractor and any principals of the Contractor certify that
 - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of
 - (i) IC 24-4.7 [Telephone Solicitation Of Consumers],
 - (ii) IC 24-5-12 [Telephone Solicitations] , or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

- (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor:
- (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

This amendment shall take effect upon execution.

All other matters previously agreed to and set forth in the original agreement and not affected by this amendment shall remain in full force and effect.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member, or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent, or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of this agreement.

THE REST OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

IN WITNESS WHEREOF, Counsel and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

Krieg Devault LLP

By: John W. Tausell

Atty #: 1786 - 49

Indiana Attorney General

By: Stephen Carter
Stephen Carter
Attorney General of Indiana

Date: June 17, 2005

APPROVED BY:

Date: June 17, 2005

DEPARTMENT OF ADMINISTRATION

OFFICE OF MANAGEMENT AND BUDGET

By: Earl A. Goode (for) By: Charles E. Schalliol (for)
Earl A. Goode, Commissioner Charles E. Schalliol, Director

Date: 06-23-05

Date: 6/30/2005

APPROVED AS TO FORM AND LEGALITY:

By: Stephen Carter (for)
Stephen Carter,
Attorney General of Indiana

Date: 7-1-05

AGREEMENT WITH OUTSIDE COUNSEL

THIS AGREEMENT ("this Agreement") is between the State of Indiana acting by and through the Office of the Indiana Attorney General (hereinafter the "State") and Krieg Devault LLP, whose address is One Indiana Square, Suite 2800, Indianapolis, IN 46204 (hereinafter "Counsel").

WHEREAS, the State has certain responsibilities under IC 30-4-5 relating to trusts for benevolent public purposes; and

WHEREAS, the State requires assistance drafting transactional documents for the Conner Prairie matter, which falls under the responsibilities outlines in IC 30-4-5 (hereinafter the "Legal Services"); and

WHEREAS, Counsel represents that it is qualified to provide services relating to these issues.

NOW THEREFORE, in consideration of the premises and the mutual promises and covenants set forth below, it is agreed by and between the State and Counsel as follows:

- 1. Duties of Counsel.** Counsel shall perform the Legal Services as requested by the State. Pursuant to IC 4-6-5-3, the Indiana Attorney General hereby appoints, employs and hires Counsel to provide the Legal Services. Counsel shall execute its responsibilities by following and applying the highest professional standards.
- 2. Consideration.** Counsel shall be paid at the rate of one hundred and ninety-five dollars (\$195.00) an hour. The maximum amount payable under this Agreement shall not exceed seventy-five thousand dollars (\$75,000.00) and Counsel shall not, and shall not be required to, provide further Legal Services once such maximum amount is reached unless the parties agree to amend such maximum amount payable. Counsel's invoices to the State shall be prepared on a monthly basis, or more frequently upon request of the State, and shall include fees incurred for Legal Services and expenses incurred by Counsel in the performance of Legal Services which will be paid by the State pursuant to Counsel's client expense policy. All payments shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures. In accordance with I.C. 4-13-2-20, the parties acknowledge that no retainer fee has been paid in connection with this Agreement.
- 3. Term.** This Agreement will begin on April 15, 2005 and end on December 31, 2005. It may be renewed or extended only by written agreement.
- 4. Access to Files and Records.** The State shall have full, immediate, and unrestricted access to the work product of the Counsel during the term of this Agreement. Upon termination or expiration of this Agreement, Counsel shall, without further request and at no cost to the State, turn over to the State all files relating to the work performed under this Agreement. Counsel acknowledges that it may be required to submit to an audit of funds paid pursuant to this Agreement, and shall maintain at its offices all books, accounting records, and other evidence pertaining to costs incurred and invoiced under this Agreement. Such materials shall be available during the term of this Agreement and for three (3) years from the date of termination or expiration,

for inspection by the State or its authorized designee. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment. Counsel shall not assign any part of the Legal Services to be performed under this Agreement to a third party. Counsel may assign its right to receive payments to such third parties as it may desire without the prior written consent of the State, provided that Counsel gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

6. Changes in Work. Counsel shall not change scope of the Legal Services to be performed pursuant to this Agreement or undertake additional work on behalf of the State unless authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written agreement.

7. Compliance with Laws and Licensing Requirements.

A. Counsel agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Contract shall be reviewed by the State and the Counsel to determine whether the provisions of this Contract require written modification.

B. Counsel and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If Counsel is not familiar with these ethical requirements, Counsel should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If Counsel or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to Counsel. In addition, Counsel may be subject to penalties under Indiana Code § 4-2-6-12.

C. Counsel certifies by entering into this Agreement, that neither Counsel nor its partner(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, Counsel agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to Counsel. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until Counsel is current in its payments and has submitted proof of such payment to the State.

D. Counsel warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State pending against Counsel, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Counsel agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Contract. If a valid dispute exists as to Counsel's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to Counsel, Counsel may request that it be allowed to continue, or receive work, without delay. Counsel must submit,

in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

E. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

F. Counsel warrants that Counsel shall obtain and maintain all required registrations, permits, licenses, and approvals, required in connection with the services provided under this Contract. Failure to do so is a material breach of the Contract and grounds for immediate termination of this Contract and denial of further work with the State.

G. Counsel agrees that the State may confirm, at any time, that no liabilities of Counsel exist to the State, and, if such liabilities are discovered, that State may bar Counsel from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until it is current in its payments on its liability to the State and has submitted proof of such payment to the State.

8. Conflict of Interest.

A. Counsel represents and warrants that, after due and diligent inquiry, it is satisfied that it has no unwaived Conflict of Interest (as that term is defined in the *Indiana Rules of Professional Conduct*) that will preclude it from providing the Legal Services.

B. Counsel represents and warrants that it has reviewed and is familiar with the statutes and regulations relating to the ethical conduct of state employees. Counsel certifies that, after due inquiry, no partner or any spouse or unemancipated child of any partner (collectively, an "Interested Party"), is an employee of the State of Indiana. If an Interested Party is an employee of the State of Indiana, Counsel shall provide the State with an opinion by the State Ethics Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the Interested Party does not violate any statute or regulation relating to the ethical conduct of state employees.

9. Continuity of Services. Counsel recognizes that the Legal Services provided under this Agreement are vital to the State and must be continued without interruption, up to the maximum amount payable under paragraph 2 hereof, and that, upon expiration or termination of this Agreement, a successor, either the State or another Counsel, may continue them. Counsel shall use its best efforts and cooperation to effect an orderly and efficient transition to a successor, and shall be reimbursed for all reasonable transition costs.

10. Disputes.

A. Counsel agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should Counsel fail to continue to perform its responsibilities as regards all non-disputed work, any additional costs incurred by the State or Counsel as a result of such failure shall be borne by Counsel, and Counsel shall make no claim against the State for such costs.

B. The parties agree to resolve disputes through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to Counsel and the Office of the Attorney General within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

C. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for Counsel to terminate this Agreement, and Counsel may bring suit to collect these amounts without following the disputes procedure contained herein.

11. Drug-Free Workplace. As required by Governor's Executive Order No. 90-5 dated April 12, 1990, Counsel certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Counsel's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) Counsel's policy of maintaining a drug-free workplace; (3) any available drug consulting, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A), above, that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify Counsel of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

12. Funding Cancellation. When the director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

13. Governing Laws. This Agreement shall be construed in accordance with, and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

14. Indemnification. Counsel agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits, including court costs, attorney's fees, and other expenses caused by any act or omission of Counsel in connection with this Agreement.

15. Independent Contractor. Counsel and the State are acting in their individual capacities and not as employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees of the other party. Counsel shall be responsible for providing all necessary unemployment and worker's compensation insurance for its employees.

16. Nondiscrimination. As required by IC 22-9-1-10 and the federal Civil Rights Act of 1964, Counsel shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or in any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Acceptance of this Agreement signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

17. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses by U.S. first class mail, postage prepaid.

- A. Notice to the State shall be sent to:
Charles J. Todd, Chief Operating Officer
Office of the Attorney General
302 W. Washington St., ICGS 5th Fl.
Indianapolis, IN 46204

B. Notice to Counsel shall be sent to:
Krieg Devault LLP
Attn: Managing Partner
One Indiana Square, Suite 2800
Indianapolis, IN 46204

18. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, finance charges, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 *et seq.*, IC 34-54-8-5, and IC 34-13-1-6.

19. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions.

20. Taxes. The State of Indiana is exempt from state, federal and local taxes. The State will not be responsible for any taxes levied on Counsel as a result of this Agreement.

21. Termination. This Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to Counsel of a Termination Notice at least fifteen (15) business days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The State will not be liable for legal services performed after effective date of termination. Counsel may terminate this Agreement as provided by Rule 1.16, *Indiana Rules of Professional Conduct*.

22. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

23. Binding Authority; Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, he/she has been duly authorized to execute this Agreement on behalf of the entity designated below, and that he/she has not, nor has any other partner, associate, member, employee, representative, agent, or officer of the entity designated below, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement, other than that which appears upon the face of this Agreement.

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IN WITNESS WHEREOF, Counsel and the State by their duly authorized representatives have executed this Agreement as of the dates set forth below.

Krieg Devault LLP

By: Richard E. Williams

Atty #: 1848-49

Date: 5/19/05

Indiana Office of the Attorney General

By: Gregory F. Zoller (for)
Stephen Carter, Attorney General

Date: May 25, 2005

Indiana Department of Administration

By: Aaron M. Goode (for)
Earl Goode, Commissioner

Date: MAY 26, 2005

State Budget Agency

By: Alice Niegand (for)
Charles Schalliol, Director

Date: 5/27/2005

Approved for Form and Legality

By: Steven Thompson (for)
Stephen Carter, Attorney General

Date: 5-31-05

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